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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
MARK EVANS PULLEN,)	
MARY KAY PULLEN,)	CASE NO. 07-65415-MHM
)	
Debtors.)	
)	
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MARK EVANS PULLEN,)	
MARY KAY PULLEN,)	
)	ADVERSARY PROCEEDING
Plaintiffs,)	NO. 07-6220
)	
v.)	
)	
REX P. CORNELISON, III,)	
JOHN A. ZIOLO, and)	
CORNELISON & ZIOLO, LLP,)	
)	
Defendants.)	

**ORDER GRANTING MOTION TO AMEND
AND DENYING MOTION TO RETURN MONEY**

This adversary proceeding commenced May 11, 2007. Plaintiffs' complaint asserts a claim against Defendants for legal malpractice in connection with a prior bankruptcy case. Defendants' answer was filed June 11, 2007. On August 2, 2007, Plaintiffs filed a motion to amend the complaint to add a fraud claim. Defendants failed to file a response; accordingly, the motion is deemed unopposed. BLR 7007-1(c). Plaintiffs, however, failed to attach to the motion to amend a copy of the proposed amendment to the complaint.

Plaintiffs have alleged matters outside the pleadings . As a motion for summary judgment. Plaintiffs have failed to comply with the requirements of the local rules and have failed to submit affidavits or other evidence in support of their motion. Therefore, the motion must be denied as inadequate.

Defendants' response is even less substantial, containing no discussion of the law and no citation to the record or other evidence to support the factual allegations.¹ Defendants do not mention the jurisdiction issue.

Under 28 U.S.C. § 157(b)(1) the bankruptcy court can enter an order in this adversary proceeding only if it is a core proceeding under § 157(b)(2). The bankruptcy court has the authority to determine if the proceeding is a core proceeding. Section 157(b)(3) states in relevant part: "The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11." A non-exclusive list of core proceedings is provided in § 157(b)(2):

Core proceedings include, but are not limited to—

- (A) matters concerning the administration of the estate;
- (B) allowance or disallowance of claims against the estate or exemptions from property of the estate and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not litigation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

¹ This court strongly recommends that Defendants employ an attorney to assist them.

- (C) counterclaims by the estate against persons filing claims against the estate;
- (D) orders in respect to obtaining credit;
- (E) orders to turn over property to the estate;
- (F) proceedings to determine, avoid, or recover preferences;
- (G) motions to terminate, annul, or modify the automatic stay;
- (H) proceedings to determine, avoid, or recover fraudulent conveyances;
- (I) determinations as to the dischargeability of particular debts;
- (J) objections to discharges;
- (K) determinations of the validity, extent, or priority of liens;
- (L) confirmations of plans;
- (M) orders approving the use or lease of property, including the use of cash collateral;
- (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and
- (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

Section 157(b)(2)(O) confers jurisdiction over “other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship. . . .” This proceeding is one in which Debtors seek to liquidate an asset, i.e. their claim against Defendants, which arose prepetition. Therefore, this is a core proceeding.


The other issues raised in Plaintiffs' motion are not ripe for decision, especially as Plaintiffs have evidenced an intent to file an amendment to the complaint. Such an amendment may present grounds for an extension of discovery, upon the filing of an appropriate motion. Accordingly, it is hereby

ORDERED that Plaintiffs' motion to amend the complaint is *granted*: within 14 days of the date of entry of this order, Plaintiffs shall file an amended complaint, accompanied by a certificate of service of the amended complaint upon Defendants. In accordance with Bankruptcy Rule 7015, Defendants are allowed ten (10) days within which to file an answer to the amended complaint. The parties are allowed an additional ten (10) days within which to file a motion or stipulation to extend discovery. It is further

ORDERED that Plaintiffs' motion with respect to jurisdiction is *granted*: core jurisdiction exists over Plaintiff's claims for relief. The remainder of Plaintiffs' motion is *denied*.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiffs' attorney, Defendants' attorney, and the Chapter 13 Trustee.

IT IS SO ORDERED, this the 13th day of November, 2007.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE